

CITY OF SAN DIEGO  
M E M O R A N D U M

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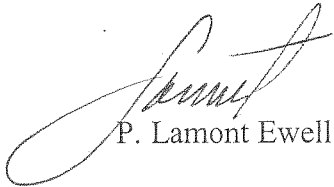
SEP - 7 2005

COUNCILMEMBER  
DONNA FRYE

DATE: September 7, 2005  
TO: Councilmember Donna Frye  
FROM: P. Lamont Ewell, City Manager  
SUBJECT: City Pension Investigation

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This is in response to your memorandum dated August 31, 2005, relating to the City's Pension investigation. From the questions that you referred to in your memorandum, the last one would be the only one that I would be able to respond to. The name of the outside law firm that we have engaged with is Morgan, Lewis & Bockius LLP, to represent the City in the pending investigation by the Securities & Exchange Commission (SEC). Attached is a copy of that Engagement Letter for you.



P. Lamont Ewell

PLE:js  
Attachment

Morgan, Lewis & Bockius LLP  
300 South Grand Avenue  
Twenty-Second Floor  
Los Angeles, CA 90071-3132  
Tel: 213.612.2500  
Fax: 213.612.2501  
www.morganlewis.com

**Morgan Lewis**  
C O U N S E L O R S   A T   L A W

**John F. Hartigan**  
213.612.2630  
jhartigan@morganlewis.com

August 29, 2005

City of San Diego  
City Administration Building  
202 C Street, 9th Floor  
San Diego, CA 92101

Attention: Lamont Ewell, City Manager

Re: Securities and Exchange Commission and Related Matters

Dear Mr. Ewell:

Morgan, Lewis & Bockius LLP appreciates the opportunity to provide legal services to the City of San Diego in connection with the pending investigation by the Securities and Exchange Commission and related matters, including, without limitation, if so requested by the City of San Diego City Council, representation of the City of San Diego before the United States Attorneys' Office. In accordance with our Firm's policy, the purpose of this letter is to set forth our understanding as to the terms upon which we have been retained.

#### MUTUAL RESPONSIBILITIES

We will provide the legal services that, in our professional judgment, are appropriate for this matter and in accordance with applicable legal and ethical standards. You agree that appropriate representatives of the City of San Diego will be reasonably available to confer with us upon request, will provide us with such documents and information as you may possess relating to the matter, will disclose all facts and circumstances of which you are aware that may bear upon our handling of the matter, will promptly pay our fees in accordance with the terms of this letter, and will otherwise assist our efforts as we reasonably request. We will maintain open lines of communications with the representatives of the City of San Diego designated by you and will share pertinent information regarding our representation of the City of San Diego with the City of San Diego's City Attorney's Office. Upon your request, we will provide status reports on the

activities and progress regarding our representation of the City of San Diego to the City of San Diego City Council.

### **SCOPE OF REPRESENTATION**

We are confident that our services in this matter will prove beneficial and we hope that you will seek our assistance with other matters in the future. However, our present agreement to provide legal services to the City of San Diego is limited to the matter, described above, for which you

have engaged us. As you are aware, we are a large law firm, and we represent many other companies and individuals. It is possible that some of our present or future clients will have disputes or other dealings with the City of San Diego during the time that we are representing the City of San Diego. Accordingly, as a condition of our undertaking this matter for you, you agree that this Firm may continue to represent, or may undertake in the future to represent, existing or new clients in any matter, including litigation, that is not substantially related to our work for the City of San Diego, even if the interests of such clients in those other matters are directly adverse to the City of San Diego. Where ethically permissible to do so, we agree to notify you of each such representation as it arises. We agree, however, that your prospective consent to conflicting representations shall not apply in any instance where, as the result of our representation of the City of San Diego, we have obtained sensitive, proprietary or other confidential information of a non-public nature that, if known to another client of ours, could be used to the material disadvantage of the City of San Diego in a matter in which we represent, or in the future are asked to undertake representation of, that client.

### **RETAINER**

It is customary for Morgan, Lewis & Bockius LLP to require the payment of a retainer in undertaking a new representation. We have not requested a retainer in connection with this representation. However, if our bills are not paid when due, or if the representation proves to be substantially more complex or time-consuming than our initial discussions would indicate, we may ask, as a condition of our continuing this engagement, that you deposit a retainer to be applied against ongoing fees and expenses on terms that will be agreed upon at that time.

### **DETERMINATION OF FEE**

Our fees are determined, in accordance with applicable ethical rules, by considering a number of factors, including the amount of time that our lawyers, legal assistants and staff devote to the matter, the experience and expertise of the professionals who perform the services, the complexity, novelty and difficulty of the questions involved, the magnitude of the matter, any time limitations or other special demands presented, and the results obtained.

You agree that our fee will be based upon the time which we devote to the matter, in accordance with hourly rates assigned to the particular lawyers and legal assistants performing the work. Currently these rates vary from \$160 to \$240 for legal assistants, from \$200 to \$470 for associates, and from \$430 to \$750 for partners. These rates are subject to periodic adjustment,

and the rates billed will be those in effect at the time the services in question were rendered. I will be the responsible partner coordinating this representation and will primarily work with my partners, John Hemann and Leslie Caldwell. In consideration of the nature of this representation and further to our conversations, we will agree to bill each of us at a rate of \$495 per hour, which represents a significant discount of our normal hourly rates.

In addition to our fees, we will bill you for any expenditures which we make or expenses we incur for you or on your behalf. Our invoices shall include itemized detail regarding such expenditures and expenses. These expenditures and/or expenses may include computer-based legal research costs, the costs of reproducing documents, long distance telephone charges, parking and travel costs (up to business coach fares), expenses which we incur while we are away from our office on your business, fees which accountants or consultants retained on your behalf charge us, and other similar expenditures. Where such expenditures are significant in amount, we may ask you to make payment directly to the provider of goods or services. We will not charge you for airfare or mileage for travel to San Diego. We understand that any reimbursable meal charges shall not include expenditures for alcoholic beverages.

### **STATEMENTS**

We will send you statements for services rendered and for expenditures which we have made for you on a monthly basis. The amounts set forth in the statements are due within thirty days after the statement is mailed. If you have any questions about any statement, please call me promptly to discuss it.

If your account becomes delinquent, we have established collection procedures which may include stopping all legal services of a non-emergency nature and, where consistent with our ethical obligations, withdrawing from this representation. We also reserve the right to ask you for reasonable security for past due balances and work required in the near future. As a condition of our undertaking this representation, you agree to provide such security to us upon request.

In fairness to the majority of our clients who pay our statements promptly, we have established late payment charges designed to charge to the late payors the costs of carrying their overdue accounts. We reserve the right, to the extent permitted by law, to add a late payment charge of 1% per month to your past due account. These late charges will accrue from the due date of the bill until the date it is paid.

### **ERRORS AND OMISSIONS INSURANCE**

As required under California Business and Professions Code 6148, you are hereby advised that Morgan, Lewis & Bockius maintains errors and omissions insurance coverage that will be applicable to the services to be rendered pursuant to this letter.

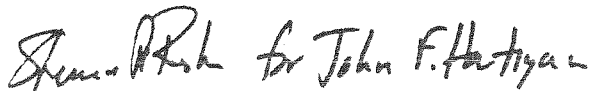
TERMINATION

We anticipate a long and mutually satisfactory relationship. However, you have the right to terminate our engagement at any time by giving us written notice of termination. We also have the right, subject to our responsibilities under applicable ethical rules, to terminate our engagement by giving you written notice if you fail to cooperate with us or to pay our bills when due or if we determine that continuing to represent you would be unethical, impractical or improper. If our relationship is terminated by either of us, you will remain obligated to pay us in full for our past services and for costs and expenses in accordance with the terms of this letter.

This agreement will apply to any additional matters we agree to undertake upon your behalf unless we enter into an express written agreement reflecting an alternate arrangement.

Please review this letter carefully, and raise and discuss with me any questions which you may have. If this letter accurately reflects your understanding of our attorney-client relationship, please indicate your approval and acceptance by dating and signing the enclosed duplicate of the letter and returning it to me. Your signature indicates your authority to act on behalf of the City of San Diego.

Very truly yours,

 for John F. Hartigan

John F. Hartigan

APPROVED AND ACCEPTED

By:

Title:

Date:

